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**HELM  
FINANCIAL CORPORATION**

**SURFACE TRANSPORTATION BOARD**  
505 Sansome Street, Suite 1800 • San Francisco, CA 94111  
415/398-4510 FAX 415/398-4816  
www.hlmx.com

**Via STB E-Filing**

April 1, 2009

Ms. Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

**RE: LOCOMOTIVE LEASE AGREEMENT ("Lease") dated as of March 30, 2009 between HELM FINANCIAL CORPORATION, a California corporation ("Lessor"), and MIDWEST TRANS-LOAD, LLC, an Illinois limited liability company ("Lessee").**

Dear Ms. Quinlan:

On behalf of Lessor, I submit for filing and recordation under 49 U.S.C. Section 11303(a) and the regulations promulgated there under the following document:

Fully executed copy of the above referenced Lease.

In connection with the recording of this Lease, please note the following information:

**Name and Address for Lessor:** Helm Financial Corporation  
505 Sansome Street, Suite 1800  
San Francisco, CA 94111

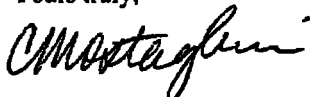
**Name and Address for Lessee:** Midwest Trans-Load, LLC  
7808 Bangert Lane  
Edwardsville, IL 62025

**Equipment:** One (1) EMD GP38-3 locomotive marked HLCX 1001

Please record this Lease as a primary document. Please apply the STB's filing fee to Lessor's account.

**Summary:** LOCOMOTIVE LEASE AGREEMENT dated March 30, 2009 between HELM FINANCIAL CORPORATION, a California corporation ("Lessor"), and MIDWEST TRANS-LOAD, LLC, an Illinois limited liability company ("Lessee") for the lease of the GP38-3 locomotive marked HLCX 1001.

Yours truly,



Cecilia Mostaghim  
Contract Administrator

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## SURFACE TRANSPORTATION BOARD

## LOCOMOTIVE LEASE AGREEMENT

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease") is dated as of March 30, 2009, 2009 between HELM FINANCIAL CORPORATION, a California corporation ("Lessor"), and MIDWEST TRANSLOAD, LLC, an Illinois limited liability company ("Lessee").

1. **Lease.** Subject to the terms and conditions of this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the locomotive described in Schedule A attached hereto ("Unit").

2. **Delivery, Inspection & Acceptance of Unit.** Lessor shall deliver the Unit to Lessee at the Metro East Industries, Inc. facility in East St. Louis, IL ("Delivery Point"). At the time of its delivery to the Delivery Point ("Acceptance Date") the Unit shall be in compliance with the regulations of the Federal Railroad Administration ("FRA") and the Association of American Railroads ("AAR") rules of interchange then in effect (collectively, "Rules"), have at least thirty (30) days remaining on its ninety-two (92) day inspection Federal "Blue Card", and equipped with an operating "ZTR Smart-Start" (the "Delivery Condition"). Unless otherwise agreed by the parties, Lessee at its expense and risk shall inspect the Unit within five (5) business days of the Acceptance Date. Lessee agrees to accept the Unit if it is in compliance with the Delivery Condition. If the Unit inspected by Lessee is not in fact in compliance with the Delivery Condition, Lessee may reject the Unit by notifying Lessor in writing within such five (5) business day period ("Rejection Notice"), and Lessor shall have the option to either promptly repair or replace the Unit at Lessor's expense or to terminate this Lease. If Lessee does not deliver a timely Rejection Notice to Lessor or if Lessee moves the Unit from the Delivery Point, the Unit will be deemed accepted by Lessee as of the Acceptance Date and to be in compliance with the Delivery Condition as of the Acceptance Date. Lessee shall be responsible for all costs associated with the transport of the accepted Unit after the Acceptance Date.

3. **Term of this Lease; Free Storage and Use of Unit; Service Report; Temporary Storage Procedures.**

(a) **Term of this Lease.** The "Interim Term" of this Lease for the accepted Unit shall commence on the Acceptance Date and shall continue until the date the Unit is delivered to an interchange on the lines of Lessee ("Delivery Date"). The fixed term of this Lease for the Unit shall commence on the Delivery Date and shall continue in effect for a period of thirty (30) days thereafter ("Fixed Term"). Upon the expiration of the Fixed Term the "Storage/Use Term" of this Lease shall commence and continue in effect through and including September 30, 2009. Except as provided herein the Interim Term, Fixed Term and the Storage/Use Term shall together be defined as the "Term of this Lease".

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5. **Rent.** Lessee shall pay to Lessor on the first day of each month in arrears rent for the Unit in the following amounts (each such amount "Rent"):

(a) **Fixed Term Rent:**

(b) **Storage/Use Term Rent:**

Rent shall commence for the Unit on the Delivery Date and shall continue in effect until such Unit is returned to Lessor in accordance with the terms of this Lease. All payment of Rent shall be made directly to Lessor at its address for notices hereunder. Lessee's obligation to pay all Rent and other sums when due and to otherwise perform its obligations under this Lease is absolute and unconditional, and shall not be subject to any abatement (except as provided in Schedule C), reduction, set-off, defense, counterclaim, interruption, deferment or recoupment. Each Rent or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor. The Rent and other sums payable by Lessee hereunder shall be paid without notice or demand.

6. **Identification Marks.** Lessee will keep the Unit marked with the identifying mark and number as set forth in Schedule A hereto, and Lessee will not change such mark or number without the prior written consent of Lessor. Lessee will not allow the name of any person or entity or any other mark or logo to be placed upon the Unit without the prior written consent of Lessor.

7. **Taxes.** Lessee shall pay when due (or reimburse to Lessor), and on a net after-tax basis shall indemnify and defend Lessor from and against any and all fees, taxes and governmental charges of any nature including, without limitation, liens, encumbrances, interest, penalties, fines and assessments (collectively, "Taxes") which may now or hereafter be imposed or levied by any foreign, federal, state, provincial or local authority upon this Lease or the Unit (including, without limitation, relating to or arising from the transportation, delivery, installation, leasing, possession, use, operation, storage and return of such Unit during the Term of this Lease). The term Taxes shall include any sales, use or ad valorem tax applicable to the operation of the Unit during the Term of this Lease. Lessee shall have no responsibility for any Taxes on or measured by Lessor's net income. Lessee will pay promptly all Taxes which may be imposed upon Lessee's income and earnings arising from or connected with this Lease or the Unit.

8. **Casualty Occurrence.** During the Term of this Lease, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, condemnation, requisition or commandeering, partial or complete, of or to each accepted Unit, however caused or occasioned (collectively, a "Casualty Occurrence"). Lessee shall promptly notify Lessor of any Casualty Occurrence and fully inform Lessor in regard thereto. Such notice shall include a settlement value payment of ("Settlement Value"), together with an amount equal to any accrued Rent for such Unit through the date of such Settlement Value payment. Upon Lessee's payment of such Settlement Value and accrued Rent for the Unit, (a) the Rent for such Unit shall cease and this Lease for such Unit shall terminate, and (b) Lessee shall be entitled to ownership and possession of such Unit or the remains thereof on an as-is, where-is basis without recourse or warranty. Lessor has the right, but not the obligation, to replace the Unit if it suffers a Casualty Occurrence, subject to Lessee's inspection. Lessee shall not be released from the obligation to pay Rent under this Lease with respect to a casualty Unit until the Settlement Value is paid to Lessor.

9. **Record Keeping and Inspection.**

(a) **Record Keeping.** Lessee shall compile and maintain records pertaining to the maintenance, repair and inspections of the Unit in accordance with the Rules, as may be amended, modified or supplemented hereafter. Upon Lessor's request, Lessee shall promptly provide to Lessor all repair, maintenance and inspection records for the Unit.

(b) **Inspection.** At the sole expense of Lessor, Lessor or its agent, shall have the right to inspect the Unit and Lessee's records with respect thereto at such reasonable times and places as Lessor may request.

10. **Warranties; Waiver.** So long as no Event of Default has occurred and is continuing, Lessor warrants that neither Lessor nor its successors and assigns will interfere with Lessee's quiet enjoyment and use of the Unit during

the Term of this Lease. Notwithstanding anything in this Lease to the contrary, LESSOR LEASES AND LESSEE ACCEPTS THE UNIT AS-IS, AND LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNIT WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNIT PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNIT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S OR OTHER DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING THE UNIT. LESSEE HEREBY WAIVES ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT OR ABSOLUTE LIABILITY IN TORT) IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGE) OR EXPENSE CAUSED BY THE UNIT. LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE UNIT AND THAT LESSEE ACCEPTS THE UNIT BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY LESSOR OR ITS AGENTS.

**11. Compliance with Laws and Rules.** Lessee agrees to comply with all laws, rules, regulations, decrees, or orders which apply to the operation or use of the Unit, including, but not limited to the rules and regulations of the AAR, FRA and the Surface Transportation Board ("STB") or any other legislative, executive, regulatory, administrative or judicial body exercising any power or jurisdiction over such Unit (collectively, "Laws"). If any Laws require the modification, alteration or repair of the Unit, Lessee agrees, at its sole expense, to maintain the same in proper condition and to operate the Unit in compliance with such Laws; provided, however, that Lessee may in good faith contest the validity or application of any such Laws in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect Lessor's rights under this Lease or Lessor's ownership of the Unit.

**12. Maintenance; Alteration; Lessor's Component Warranty; Accessions; EPA Tier O Compliance; Emissions Related Maintenance.**

(a) **Maintenance.** At Lessee's sole expense, Lessee shall at all times in accordance with the Rules, cause the Unit to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair as it was when it first became subject to this Lease, ordinary wear and tear excepted. Lessee will perform all repair and maintenance work, servicing, lubrication and inspection of the Unit in accordance with the more stringent of either (i) Lessee's existing maintenance practices, or (ii) the original equipment manufacturer's recommendations.

(b) **Lessor's Component Warranty.** Effective upon the Delivery Date through the expiration of the Term of this Lease or any extension thereof ("**Warranty Period**"), Lessor will pay the costs for either the repair or replacement of any locomotive component(s) as set forth in Schedule C attached hereto ("**Warranty Item**") which suffers a catastrophic failure during the Term of this Lease. For purposes hereof, the term "catastrophic failure" shall mean the failed Warranty Item requires removal from the Unit to complete such repair or replacement. Notwithstanding anything herein to the contrary, Lessee will pay the costs to repair or replace the Warranty Item (a) if the Warranty Item can be repaired in place without removal of the Warranty Item, (b) if the failure of the Warranty Item results from Lessee's misuse or abuse, any derailment or accident, or from Lessee's failure to comply with the original manufacturer's operating instructions, or (c) if the failure of the Warranty Item results from repairs or alterations which are not authorized by Lessor, where such authorization is required. In the event of a catastrophic failure of a Warranty Item for which this warranty applies, Lessor may in its sole discretion terminate this Lease. Lessor shall have the right, but not the obligation, to replace the terminated Unit with a substitute Unit of like kind and quality, and such replacement Unit will be subject to this Lease as if originally a part thereof, subject to Lessee's right of inspection. **LESSOR'S LIABILITY FOR THE CATASTROPHIC FAILURE OF ANY WARRANTY ITEM IS EXPRESSLY LIMITED TO THE COST OF REPAIR OR REPLACEMENT OF SUCH WARRANTY ITEM. IN NO EVENT SHALL LESSOR BE LIABLE UNDER ANY CIRCUMSTANCES TO LESSEE OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES IN ANY AMOUNT, INCLUDING, BUT NOT LIMITED TO, TRANSPORTATION CHARGES (EXCEPT AS PROVIDED IN SCHEDULE C), LOSS OF USE OR DOWNTIME OF THE UNIT OR LOST PROFITS.**

(c) **Alteration; Accessions.** Lessee shall not materially alter, or allow any third party to materially alter, the physical structure of the Unit without the prior written consent of Lessor. All additions, alterations, improvements or

replacements to the Unit made by Lessee shall constitute accessions to such Unit and belong to Lessor unless otherwise agreed by the parties in writing.

(d) **EPA Tier O Compliance.** In order for Lessor, as the owner of locomotives manufactured on or after January 1, 1973, to comply with existing EPA guidelines Lessor must maintain records of any power assembly replacement. Therefore, if at any time during the Term of this Lease Lessee replaces one or more power assemblies on any subject Unit Lessee shall promptly notify Lessor in writing with the following information: (i) Unit number; (ii) date of replacement; (iii) position; (iv) liner serial number removed; (v) liner serial number applied; and (vi) shop location.

(e) **Emissions Related Maintenance.** For the Unit which is (i) a remanufactured EMD locomotive powered by a turbocharged 645 or 710 series engine and (ii) Tier 0 compliant in accordance with the regulations of the Environmental Protection Agency, Lessee agrees to comply with the maintenance instructions supplied by Lessor for the Unit(s) if applicable.

13. **Insurance.** During the Term of this Lease and so long as Lessee retains possession of the Unit, Lessee shall maintain: (a) all-risk, physical loss or damage insurance for each such Unit in a minimum amount equal to the aggregate Settlement Value; and (b) public liability insurance, including, but not limited to, "Broad Form General Liability, Railroad Liability," in a minimum amount of \_\_\_\_\_ per occurrence for personal or bodily injury, wrongful death and property damage, in each case for such risks and with such insurance companies as are reasonably satisfactory to Lessor. All insurance policies shall be in the name of Lessee and shall (a) name Lessor as loss payee for the all risk insurance and as additional insured for liability insurance, and (b) provide Lessor with thirty (30) days' prior written notice before coverage lapses, is canceled or materially changes. If Lessee fails to obtain insurance, or if said insurance lapses or is canceled, Lessor has the right to purchase the insurance described above and Lessee shall pay the cost thereof. Lessee's insurance policies shall be primary to any insurance of Lessor, and Lessee shall require its insurers to specifically waive subrogation, claim and recovery against Lessor's insurance. Any deductibles in the above described policies shall be paid by Lessee. Lessee shall furnish to Lessor upon execution of this Lease and thereafter at Lessor's request, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a certified copy of each insurance policy upon written request.

14. **Indemnification.** Lessee shall indemnify, defend and hold harmless Lessor and its officers, partners, shareholders, affiliates, directors, attorneys, employees and agents from and against any and all costs, expenses, losses, taxes, penalties, obligations, claims, damages, actions or other liabilities (including but not limited to reasonable counsel fees and expenses, and tort and strict liability claims) which Lessor may incur (unless resulting from Lessor's gross negligence or willful misconduct) in any way relating to, arising from or by reason of (a) this Lease or the use, operation, condition, delivery, storage, or return of the Unit, until such Unit is returned to Lessor in accordance with the terms of this Lease, or (b) any accident, personal injury, death, property damage or other liability involving the Unit, on or after the Acceptance Date until such Unit is returned to Lessor in accordance with the terms of this Lease. The indemnities hereunder shall survive payment or performance of all other obligations under this Lease or the expiration or earlier termination of this Lease. Lessee shall give Lessor prompt written notice of any event or condition in connection with which Lessor may be entitled to indemnification hereunder.

15. **Financial Information.** Lessee agrees to furnish to Lessor (a) within one hundred twenty (120) days after the close of each fiscal year, its audited consolidated financial statements including its most recent balance sheets, statements of income, retained earnings and changes in financial position for the fiscal year then ended, each prepared in accordance with United States generally accepted accounting principles consistently applied ("GAAP"); all of which shall be certified by Lessee's independent auditors (or if unavailable by the president or chief financial officer), to be complete, correct and in accordance with GAAP subject only to normal year-end auditing adjustments; and (b) promptly from time to time such other information concerning the business, condition and affairs of Lessee as Lessor shall reasonably request.

16. **Liens.** At its sole expense, Lessee will keep the Unit or any part thereof free and clear of any and all liens, security interests, charges, claims or other encumbrances ("Liens"), except for any Liens arising by, through or under Lessor. Lessee will promptly pay, satisfy and otherwise take such actions as may be reasonably necessary to keep the Unit free and clear of, and to duly discharge, eliminate or bond in a manner satisfactory to Lessor, any Liens which may arise. Lessee will promptly notify Lessor in writing if it has knowledge of any Lien that shall attach to the Unit, and of the full particulars thereof.

**17. Return.**

(a) **Return.** On or about the expiration of the Term of this Lease and at Lessor's direction, Lessee shall return the Unit to Lessor at one of the following locations:

or, at another location as mutually agreed upon between the parties hereto (each location the "Return Point"). At its sole expense, Lessee shall return the Unit to Lessor at the Return Point (i) in as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, (ii) in condition suitable for movement in the interchange system free from all FRA defects and in conformity with all applicable laws, rules and regulations and (iii) with a minimum of thirty (30) days remaining on its Blue Card. Lessee shall continue to pay Rent and this Lease shall remain in full force and effect with respect to the Unit until such Unit is returned to Lessor at the Return Point. Lessor will inspect the Unit at the Return Point; provided, however, if the Unit is moved to a storage location on the lines of Lessee in accordance with Section 16(b) hereof, Lessor will inspect the Unit at such storage location. Lessee agrees to pay Lessor within \_\_\_\_\_ of receipt of any invoice for any repairs for which Lessee is responsible hereunder. If upon the expiration or earlier termination of this Lease Lessor demands in writing the return of the Unit to the Return Point and Lessee fails to deliver such Unit to the Return Point within ten (10) calendar days of receipt of such notice, Rent shall cease and Lessee shall immediately commence to pay to Lessor (as liquidated damages and not as a penalty) a monthly late fee equal to \_\_\_\_\_ of the monthly rental rate for such Unit then in effect until such Unit is delivered to the Return Point. All other terms and conditions of this Lease shall remain in force. The provisions of this Section are without prejudice to, and in addition to, any other remedies of Lessor.

(b) **Free Storage.** Upon Lessor's request, Lessee shall permit Lessor to store the Unit on its own tracks free of charge for a period not exceeding \_\_\_\_\_ ("Free Storage Period") after such expiration and shall transport the same to the Return Point, all as reasonably directed by Lessor. The movement and storage of such Unit shall be at the expense and risk of Lessee if Lessor has given movement and storage instructions within the Free Storage Period; provided, however, that if Lessor requests Lessee to store the Unit for a period beyond the Free Storage Period, such additional storage shall be at the expense of Lessor. During any storage period Lessee will permit Lessor or Lessor's agent, to inspect the same at such times as Lessor shall reasonably request.

**18. Default.** Each of the following shall constitute an "Event of Default" under this Lease:

(a) Lessee fails to make any payment of any part of the Rent or any other amount payable to Lessor under this Lease and such nonpayment continues for ten (10) calendar days after the due date thereof;

(b) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Unit, or any part thereof;

(c) Lessee fails to perform or observe any term, covenant, condition or agreement contained in this Lease and such failure continues uncured for ten (10) calendar days after written notice thereof from Lessor;

(d) Any representation or warranty made by Lessee in this Lease shall be false or misleading at any time in any material respect;

(e) Lessee ceases doing business as a going concern or transfers all or a substantial part of its assets; or becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors; or Lessee applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer is appointed without the consent of Lessee; or Lessee institutes any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding is instituted against Lessee and is not dismissed within thirty (30) calendar days; or any judgment, writ, warrant or attachment or execution of similar process is issued or levied against a substantial part of Lessee's property and remains unsatisfied for thirty (30) calendar days.

## 19. Remedies.

(a) **Events of Default.** Upon the occurrence of any Event of Default, Lessor may, with or without notice to Lessee, exercise any one or more of the following remedies, as Lessor in its sole discretion shall elect:

(i) proceed by appropriate court action(s) either at law or in equity, to enforce Lessee's performance under this Lease or to recover damages for the breach thereof;

(ii) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Unit shall absolutely cease and terminate, but Lessee shall remain liable as herein provided;

(iii) require Lessee, at Lessee's expense, to return the Unit in accordance with the return provisions of this Lease, or Lessor or its agent, at its option may in a reasonable manner and without damage to the property of Lessee or any third party enter upon the premises of Lessee or other premises where the Unit may be and take possession of such Unit and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its sublessee(s), successors or assigns, to use the Unit for any purposes whatsoever;

(iv) declare immediately due and payable all Rents and other amounts due and to become due under this Lease;

(v) sell by public or private sale, release, hold, retain, or otherwise dispose of the Unit in any manner Lessor chooses, free and clear of any claims or rights of Lessee; and

(vi) exercise any other right or remedy then available to Lessor at law or in equity.

(b) **Interest.** In the event Lessee shall be in default in the payment of Rent or any other amount due under, or in connection with, this Lease, Lessee shall pay Lessor as additional rental interest on such unpaid sum from its due date to the date of payment by Lessee at a rate equal to \_\_\_\_\_ compounded monthly or the maximum rate permitted by law, whichever is less.

(c) **Cumulative Remedies.** No remedy referred to in this Lease is intended to be exclusive, but each shall be cumulative and concurrent to the extent permitted by law, and shall be in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No failure or delay on the part of Lessor to exercise any right or remedy hereunder shall operate as a waiver thereof. No express or implied waiver by Lessor of any default or breach shall constitute a waiver of any other or subsequent default or breach by Lessee. If Lessee fails to pay or otherwise perform any of its obligations under this Lease, Lessor may, but shall not be obligated to, pay such amounts or perform such obligations for the account of Lessee without thereby waiving Lessor's right to declare an Event of Default. In any such event, Lessee shall immediately upon demand reimburse Lessor for any such costs and expenses incurred by Lessor.

(d) **Costs of Default.** In addition to the above and in all cases, Lessee shall be liable for all costs, expenses and damages incurred by Lessor by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including, but not limited to, all reasonable attorneys' fees and costs whether or not court proceedings are brought, costs related to the repossession, storage, repair and transportation or other disposition of the Unit, and all incidental and consequential damages.

## 20. Assignment and Use.

(a) **Assignment by Lessor.** Lessor may, without the consent of and without notice to Lessee, assign or sell its interest in, grant a security interest in, or otherwise transfer in whole or in part this Lease, the Unit or any of its rights, interests or obligations with respect thereto, including, without limitation, all Rent and other sums due or to become due to one or more persons or entities. Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to promptly provide any reasonable documentation requested by Lessor. Lessee shall not assert against any assignee any claim, defense, counterclaim or set-off that Lessee may at any time have against Lessor.

(b) **Assignment by Lessee.** So long as Lessee shall not be in default hereunder, Lessee may with the prior written consent of Lessor, at Lessor's sole discretion, sublease or assign the Unit. For purposes hereof an assignment shall be deemed to include any sale, transfer or assignment of this Lease by operation of law or otherwise or any material change in the beneficial ownership of Lessee. Without the prior written consent of Lessor, Lessee may not otherwise transfer or encumber its leasehold interest under this Lease in the Unit and Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, the Unit.

(c) **Restrictions on Use.** Lessee covenants and agrees at all times that: (i) Lessee will not sublease or assign this Lease to any person or entity that is not a United States citizen or incorporated under the laws of a state of the United States, (ii) Lessee will not use or operate the Unit outside of the United States (other than incidental and temporary use in Canada not to exceed ninety (90) days in any one year period), (iii) Lessee will use and operate the Unit only in the ordinary conduct of its business by qualified employees of Lessee and in accordance with all applicable operating instructions for the Unit, and (iv) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written request therefore.

**21. Representations & Warranties of Lessee.** Lessee represents and warrants to Lessor that (a) Lessee is a corporation duly organized, validly existing and in good standing under applicable state law, with adequate corporate power to enter into this Lease; (b) this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms; (c) the execution and performance of this Lease will not contravene, breach or create a material default under any legal, organizational or contractual obligation of Lessee or any law, rule, regulation, judgement or order binding upon Lessee or its property; (d) there are no pending or threatened actions or proceedings before any court or administrative agency that could have a material adverse effect on Lessee, nor is Lessee in default under any material loan, lease or purchase obligation; and (e) the financial statements and other information furnished and to be furnished to Lessor are and will be true and correct.

**22. Notices.** Any notices given or required to be given hereunder shall be sufficient if transmitted and received by facsimile (with a confirmation copy sent by overnight air courier or certified mail), sent by overnight air courier, or deposited in the United States mail, postage prepaid, certified, return receipt requested, to the addresses set forth below or at such other address as the parties shall have specified in writing:

If to Lessor:

Helin Financial Corporation  
505 Sansome Street, Suite 1800  
San Francisco, CA 94111  
FAX: (415) 398-4816  
ATTN: President and COO

If to Lessee:

Midwest Trans-Load, LLC  
7808 Ranger Lane  
Edwardsville, IL 62025  
FAX: (618) 656-1268  
ATTN: Mr. Kurt E. Johnson

**23. Miscellaneous.**

(a) **Further Assurances.** Upon Lessor's request and at its sole expense, Lessee shall promptly execute, acknowledge and deliver such further documents, and take any and all other action reasonably requested by Lessor from time to time as is necessary for the purpose of effectuating the intent and purposes of this Lease, as required by law or to protect the interests of Lessor in the Unit and this Lease, including, without limitation, a Memorandum of Lease to be filed with the STB and UCC-1 Financing Statements.

(b) **Severability.** If any term, provision, covenant or restriction of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the parties hereto that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable.

(c) **Entire Agreement; Amendment.** This Lease, together with all exhibits and schedules attached hereto, contains the entire agreement of the parties regarding the subject matter hereof and supersedes all other agreements and understandings, oral or written, with respect thereto. This Lease may not be amended, modified or changed, or any provision of this Lease waived, except by instruments in writing signed by the parties hereto. No course of dealing



between the parties will be deemed to modify, amend or discharge any part of this Lease or any rights or obligations of any party.

(d) **Successors and Assigns.** This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

(e) **Counterparts.** This Lease and any documents collateral thereto may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original, but all such counterparts taken together shall constitute but one agreement.

(f) **Law Governing; Waiver of Jury Trial.** This Lease shall be construed and enforced, in accordance with the laws of the State of California, without reference to its choice of law provisions; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11301. **THE PARTIES EACH IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY MATTER RELATING DIRECTLY OR INDIRECTLY TO THIS LEASE OR THE UNIT WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LEASE.**

(g) **Construction.** The language used in this Lease will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against either party. Lessee acknowledges that it has been represented by counsel in connection with this Lease or that it has voluntarily declined to seek representation by counsel. Lessee has not received nor is Lessee relying on advice concerning tax and legal matters from Lessor or its counsel.

(h) **Brokers.** Each party represents and warrants that it has not employed, authorized or appointed a broker in connection with the transactions contemplated by this Lease.

(i) **Survival.** The respective representations, warranties, indemnities, covenants, obligations and agreements of the parties shall survive the expiration or earlier termination of this Lease or any extensions thereof.

(j) **Attorneys' Fees.** If any legal action is brought for the enforcement of this Lease or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Lease, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed by their duly authorized representative as of the day and year first above written.

LESSOR

LESSEE

HELM FINANCIAL CORPORATION

MIDWEST TRANS-LOAD, LLC

By: 

Name: Courtney A. Williams

Title: President and COO

By: 

Name: Kurt E. Johnson

Title: Member



**SCHEDULE A**

To the Locomotive Storage-Lease Agreement dated as of 3/30/09, 2009 between  
Helm Financial Corporation and Midwest Trans-Load, LLC.

**THE UNIT:**

**Description:** One (1) EMD GP38-3, 2,000 Horsepower locomotive equipped with Woodward Governor Complete Locomotive Control ("CLC") and an operating ZTR Smart-Start.

**Unit's Reporting Mark & Number:** HLCX 1001

CM